CASE NO. 19-CI-01063
Electronically Filed

JEFFERSON CIRCUIT COURT
DIVISION TEN
JUDGE ANGELA McCORMICK BISIG

JOHN P. ASKIN — PLAINTIFF

v.

DEFENDANTS UNIVERSITY OF NOTRE DAME AND NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S CONSOLIDATED REPLY IN SUPPORT OF MOTIONS TO DISMISS

UNIVERSITY OF NOTRE DAME, *et al*. — DEFENDANTS

Notre Dame and the NCAA established in their motions to dismiss that plaintiff John Askin's claims, which involve head injuries he sustained playing football in the 1980s, are time barred. In an effort to avoid the statute of limitations—which under black letter Kentucky law begins to run on the date of injury—Askin's response in opposition characterizes his lawsuit as a "latent disease case," disavows the Complaint's allegations that he suffered head injuries decades ago, and advocates for an unprecedented extension of Kentucky's discovery rule. Askin also incorrectly contends that his negligence claim accrued only once he received a formal medical diagnosis last year. Askin's efforts to save his fraud claims likewise fail, as those claims fall well outside the ten-year statute of repose. Contrary to Askin's arguments, Kentucky precedent requires dismissal of this action, as explained below.

I. Askin's Personal Injury Claims Are Time Barred.

A. Askin's Cause of Action Accrued When He Sustained Head Injuries.

In Kentucky, the discovery rule does not apply when a plaintiff suffers an injury and later develops additional resulting medical problems. (Motion, pp. 9-16, citing *Caudill v. Arnett*, 481 S.W.2d 668, 669 (Ky. App. 1972).) Unable to challenge this irrefutable statement of law, Askin instead seeks to re-frame the issue by downplaying the Complaint's allegations that he suffered head injuries over thirty years ago, including four concussions and "many more concussive

injuries." (Compl., ¶¶ 80, 82). Askin argues that the true "injury" at issue in this case is "latent brain disease, including symptoms of CTE," which he developed decades later. (Opp., p. 8.)

But Askin does not cite any Kentucky case applying the "latent injury" statute of limitations exception—which Kentucky courts have employed only in toxic tort cases—to a case like this, in which the plaintiff experienced immediate injuries. Askin states that Kentucky courts have applied the discovery rule "in multiple contexts," but each case he cites involves toxic substance exposure. (*Id*., pp. 13-16.) There is no Kentucky case extending the statute of limitations for decades after an impact that caused immediate, recognizable injury. Askin's strained effort to apply the toxic tort latent injury exception to this case is evident in his vague description of this exception as allegedly applying to any situation "where a plaintiff was exposed years earlier to a *harmful circumstance* . . . ." (*Id*., p. 1, (emphasis added).) The toxic tort discovery rule framework applies only to exposures to harmful chemicals or substances, not to the "harmful circumstance" alleged by Askin—head injuries experienced as a result of alleged wrongful conduct. Askin is asking this Court to change the law.

The controlling case remains *Caudill*, which requires a plaintiff to bring suit within one year of experiencing an injury, however minor. Askin incorrectly argues that *Caudill* is distinguishable because it involved (1) "a known injury," (2) "a known cause of the injury," and (3) "a known defendant." (Opp., p. 9.) Putting aside that each of these three factors is present here,[1] Askin misapprehends the core holding in *Caudill*: that the plaintiff's cause of action "accrued on the day he was injured…even though he was not made fully aware of the extent of his injury until several years later." 481 S.W.2d at 669. Ignoring this holding, Askin protests that unlike the plaintiff in *Caudill*—who suffered minor injuries in a bus accident and was diagnosed

[1] The Complaint alleges that (1) Askin sustained injuries, including four concussions (Compl., ¶ 80), (2) coaches and trainers caused such injuries (*id*., ¶¶ 47, 77), and (3) Notre Dame and the NCAA bore responsibility (*id*., ¶¶ 45-47).

years later with pancreatitis—he did not recognize that his concussive symptoms represented "an injury to be monitored, treated, or even acknowledged" and he did not "complain[] of continuous pain." (*Id*., pp. 9-10.) Under Kentucky law, however, the relevant question is whether Askin suffered an injury (e.g., a concussion)—which he alleges he did (Compl., ¶ 80)—not whether he recognized the extent to which the injury needed treatment or caused continuous pain. Although Askin tries to spin his injuries as "unrecognized and untreated transient concussive symptoms" (Opp., p. 2), he cannot dispute that a concussion is a cognizable injury under Kentucky law.[2]

Notwithstanding Askin's extensive efforts to characterize his injuries as "latent"—a word the Complaint uses "nearly sixty (60) times" (Opp., p. 2)—Askin cannot simply describe the later-manifesting effects of head injuries he sustained at Notre Dame and then claim they represent a new "injury" for statute of limitations purposes. Under that theory, any plaintiff with a recently diagnosed degenerative condition of the spine, knee, or hip could pursue a claim for a transient injury sustained decades ago—whether in a car accident, through premises liability, or through product liability—if the degenerative condition could arguably be connected to that long-ago injury. Such a result would clearly be contrary to Kentucky law. *Caudill*, 481 S.W.2d at 669. The fact that Askin's claims involve head injuries does not permit a different result.

B. Askin's Claims Do Not Fall Within the Narrow Asbestos Exception.

Askin contends that Defendants are seeking a "*narrowing* of Kentucky's discovery rule to exclude latent brain disease cases brought by former college football players," (Opp., p. 4 (emphasis added)), when the opposite is true: Askin is seeking an unprecedented *expansion* of Kentucky's discovery rule. Askin asks the Court to apply a narrow exception to general accrual

[2] *See, e.g., Sallee v. Ashlock*, 438 S.W.2d 538, 540 (Ky. 1969) (noting that accident victim's "injuries included a mild brain concussion"); *Wallace v. Zero Co*., No. 2014-CA-000604-MR, 2015 Ky. App. Unpub. LEXIS 452, at *3 (Ky. App. June 19, 2015) (personal injury case involving possible concussion and post-concussive syndrome). Although Askin alleges that he and others players were given pain medications that made him "less likely to recognize" that he had suffered injuries and that masked his symptoms, (Opp., p. 2), he admits he had four concussions and numerous sub-concussive injuries, and he does *not* allege that he never had a concussive symptom.

principles that applies only to certain asbestos claims. His novel theory would indefinitely toll the statute of limitations not only for concussion cases, but for every other case where a plaintiff simply labels her injury or disease as "latent."

Askin asks the Court to apply a unique, asbestos-specific exception to the general rule that a plaintiff must sue within one year of being injured. In *Carroll v. Owens-Corning Fiberglass Corp.*, 37 S.W.3d 699 (Ky. 2000), the Supreme Court held that a person exposed to asbestos who develops only minor, non-disabling asbestosis may elect not to sue until he or she develops one of the more serious conditions that can also result from asbestos exposure—lung cancer and mesothelioma. The *Carroll* exception does not apply here, despite Askin's attempt to manufacture parallels. (Opp., p. 7) (arguing that the Complaint's allegations are "no different from pleadings the Court would expect in exposure cases involving inhalation or ingestion of chemical"). *Carroll* is a "narrow" and "very fact-specific . . . exception to the general rule" that a plaintiff must sue within one year of injury, and Kentucky courts have not extended it beyond asbestos cases. *Combs v. Albert Kahn & Assocs.*, 183 S.W.3d 190, 197-98 (Ky. App. 2006).

And the considerations underpinning *Carroll*'s holding are not present in this case. *Carroll* did not involve an injury that would put the plaintiff on notice of potential future harm; rather, it involved a disease that developed years after exposure to a substance that caused no injury to the plaintiff at the time of exposure and was not known by him to be dangerous. *See Carroll*, 37 S.W.3d at 702. Askin alleges something altogether different: that he was instructed to strike players with his helmeted head; that he suffered at least four concussions as a result; and that there was a body of medical literature linking multiple concussions to long-term disease. Additionally, the Court's holding in *Carroll* turned on the fact "that these diseases [asbestosis and cancer/mesothelioma] are not causes or prerequisites for each other. *One does not flow from*

the other." *Id*. at 700 (emphasis added). Askin, however, alleges exactly the opposite regarding the relationship between concussions and neurodegenerative brain disease: the crux of his Complaint is that, at the time he played football, publicly available medical research established a link between head injuries and an increased risk of long-term disease. (Compl., ¶¶ 102-135.)

Incorrectly relying on *Carroll*, Askin argues that any claim for latent brain disease brought in 1987 would have been "premature and purely speculative" and would have been dismissed. (Opp., p. 12.) To the contrary, a plaintiff who suffers a "present physical injury" may assert a claim for increased risk of future disease. *Capital Holding Corp. v. Bailey*, 873 S.W.2d 187, 194-195 (Ky. 1994). This was established law while Askin was still a student-athlete at Notre Dame. In *Davis v. Graviss*, 672 S.W.2d 928, 931-932 (Ky. 1984), the Supreme Court held that a plaintiff who suffers any physical injury may recover "for an increased risk of future harm."[3] Of particular relevance, the Court in *Davis* favorably cited a case from another jurisdiction allowing a plaintiff with a skull fracture to recover for "increased risk of future epilepsy." *Id*. at 931.

C. Askin's Reliance on Cases Decided Outside Kentucky is Misplaced.

Askin argues that this Court should follow a handful of decisions from other jurisdictions applying the discovery rule to cases involving brain damage from concussions. (Opp., pp. 16-20.) He relies principally on *Schmitz v. NCAA*, 2018 Ohio LEXIS 2614, 2018-Ohio-4391 (Oh. 2018), in which the court allowed the plaintiff's claims to survive a motion to dismiss. As Askin acknowledges, however, the court in *Schmitz* relied on an earlier Ohio case, *Liddell v. SCA Servs. of Ohio*, 635 N.E.2d 1233 (Oh. 1994). But *Liddell*'s holding is inconsistent with Kentucky law: the court applied the discovery rule where a police officer was visibly injured responding to a

[3] Because Kentucky is a "one disease" state that prohibits splitting a cause of action, this means that subject to a limited exception applicable only in some asbestos cases, a plaintiff who is injured *must* assert any claim for increased risk of future harm resulting from that injury. *Combs*, 183 S.W.3d at 195-96.

bus accident and later developed cancer as a result of those injuries. This decision conflicts with *Caudill*, and there is no Kentucky case applying the discovery rule when the plaintiff experiences immediate injury as a result of the defendant's alleged tortious conduct.

Askin incorrectly states that "every judicial opinion that has addressed a claim for latent brain disease arising from sports-related head injury" has denied a motion to dismiss. (Opp., p. 18). Despite Askin's efforts to depict a uniformity of judicial decisions on this issue, the limited body of law—which involves disparate allegations by plaintiffs and the application of varying state laws on statutes of limitations—remains in significant flux. Indeed, contrary to Askin's assertion, cases alleging latent brain disease arising from sports-related head injury *have* been dismissed at the motion to dismiss stage. Specifically, 53 cases were dismissed on statute of limitations grounds in *In re: Riddell Football Helmets*, No. 2016-L-008474 (Ill. Cir. Ct.), which involved similar allegations by former football players against a helmet manufacturer.[4]

D. The Complaint Demonstrates That Askin Should Have Known Through the Exercise of Reasonable Diligence That He Had Suffered an Injury.

Even if the discovery rule were applicable (it is not), Askin's claim would still be barred. The Complaint devotes seven pages to allegations describing nearly one hundred years of publicly available studies and articles supposedly linking football to brain injuries. Yet, significantly, Askin's response fails to include a *single word* addressing Defendants' argument that those publications amounted to constructive knowledge that triggered the statute of limitations. This is fatal to Askin's claims. (*See* Motion, pp. 16-19.)

Askin rests his arguments on the mistaken belief that the statute of limitations does not begin to run until the date a plaintiff "receive[s] a diagnosis from a competent medical professional." (Opp., p. 8). Kentucky courts have rejected this argument, holding that publicity

[4] *See In re: Riddell Football Helmets*, Order (entered June 30, 2017), attached as Exhibit 1.

of a link between symptoms and a known cause results in accrual of a claim.[5] *See, e.g.*, *Adkins v. Duff*, No. 04-cv-103-HRW, 2004 U.S. Dist. LEXIS 26688, at *9 (E.D. Ky. Aug. 31, 2004) (publicly available information and local and national television news coverage concerning pharmaceutical drug recall put plaintiffs on notice of their potential claim against the drug manufacturer). Askin's own allegations demonstrate that, based on publicly available information, he should have discovered his injury well over one year before he filed suit. (*Id.*)

E. Public Policy Concerns Support Dismissal of Askin's Claim.

Askin insists that considerations of judicial economy weigh against dismissal of his claims. He contends that a policy goal mentioned in *Carroll*—preventing the filing of numerous anticipatory claims by plaintiffs who have not yet suffered serious medical consequences—militates in favor of allowing his case to go forward. (Opp., pp. 11-12.) But concerns of judicial economy actually favor applying the existing statute of limitations. To allow Askin's claim to proceed, the Court would have to adopt a rule that would suddenly revive numerous stale claims seeking damages for recently developed consequences of injuries suffered long ago. These claims would include not only other head injury claims but also a host of claims involving later-manifesting consequences of injuries to different body parts. This scenario presents a far more concrete risk than Askin's speculative concern that individuals who played football more recently might flood the courts if Askin's claim was dismissed.[6] In any event, Askin's professed concern about judicial economy fails to outweigh the countervailing principle the Supreme Court recognized in *Munday v. Mayfair Diagnostic Lab.*, 831 S.W.2d 912, 914 (Ky. 1992): "the value

[5] In addition, contrary to Askin's claim that the Ohio court in *Schmitz* issued an unqualified endorsement of the arguments he raises here, the Court rejected the plaintiff's argument that a claim does not accrue until the date a formal diagnosis is made by a competent medical authority. 2018 Ohio LEXIS 2614 at ¶ 30.

[6] It merits mention that Askin's Complaint alleges that beginning in 2010, the NCAA implemented rules aimed at protecting players from the long-term harmful consequences of concussions. (Compl., ¶¶ 143-146.)

of statutes which 'bar stale claims arising out of transactions or occurrences which took place in the distant past,'" like the thirty-year-old claims Askin asserts here.

II. Askin's Fraud Claims Are Untimely.

Askin acknowledges that the ten-year statute of repose for fraud claims in KRS 413.130(3) applies to his claims for "constructive fraud" and "fraudulent concealment." (Opp., pp. 20-21.) He argues, however, that KRS 413.190(2) tolled the statue of repose, rendering these claims timely. Specifically, Askin maintains that the defendants allegedly fraudulently concealed "the dangers of long-term latent brain disease" from Askin while he was playing football at Notre Dame and that this tolls the statute of repose under KRS 413.190(2). (Opp., p. 21.) Askin's argument is incorrect for at least three reasons.

First, even if KRS 413.190(2) were to apply,[7] it would toll the statute of limitations only for the duration of the alleged concealment, which ended at the very latest in 1986. As is apparent from the plain language of KRS 413.190(2), the statute of limitations is tolled only during "the time of the continuance of the…obstruction." KRS 413.190(2); *see also Emberton v. GMRI*, 299 S.W.3d 565, 575 (Ky. 2009) (limitation period begins to run once obstruction is revealed or should have been discovered). According to the Complaint, all alleged concealment took place while Askin was a student-athlete at Notre Dame, from 1982 to 1986 (Compl., ¶¶ 181-194), so his claims would be barred even if the fraudulent-concealment statute applied.

Second, the Complaint wholly fails to allege conduct that would constitute fraudulent concealment under KRS 413.190(2). As the Supreme Court has explained, concealment "must

[7] KRS 413.190(2) clearly does not apply. By its plain language, the statute applies only to "a resident of this state," which Notre Dame is not. Askin glosses over this fact, asserting summarily that Notre Dame should be considered a "resident of this state" merely because it is allegedly subject to the jurisdiction of this Court. But the Complaint's jurisdictional allegations are aimed at establishing that this Court had jurisdiction over Notre Dame as a *non-resident* defendant under the Kentucky long-arm statute. Indeed, the Complaint expressly identifies Notre Dame as an "out-of-state entit[y]," (Compl., ¶¶ 36-41), which means KRS 413.190(2) cannot apply.

represent an 'affirmative act' and 'cannot be assumed' -- i.e., it must be active, not passive." *Emberton*, 299 S.W.3d at 573. The statute requires conduct that is "affirmatively fraudulent" and that "misleads or deceives plaintiff and obstructs or prevents him from instituting his suit." *Id*. Accordingly, unless the law imposes a duty to speak, "mere silence" cannot constitute an act of concealment under KRS 413.190(2). *Emberton*, 299 S.W.3d at 573-574. Askin's vague allegations of alleged concealment—that Notre Dame and the NCAA "failed to inform" players of the long-term risks of repetitive head impacts (Compl., ¶¶ 183, 194)—do not even approach the showing required by KRS 413.190(2). Askin does not identify a single "affirmative act" by Notre Dame or the NCAA that obstructed his ability to file suit. Instead, he alleges (insufficiently) that the Defendants' "mere silence" regarding the alleged risk of harm constituted an obstructive act. *Emberton*, 299 S.W.3d at 573-574. Moreover, any argument that Notre Dame or the NCAA "actively concealed" the harms associated with head injuries would be belied by the Complaint's allegations concerning NCAA publications and studies before and after Askin played, including a 1933 NCAA medical manual that "acknowledged the risk of long-term brain disease in football players," a 1976 NCAA rule prohibiting initial contact with the head, and 2003 NCAA-funded studies regarding concussions. (Compl., ¶¶ 71, 105, 135.)[8]

Third, KRS 413.190(2) does not toll the statute of repose in KRS 413.130(3), which—unlike a statute of limitations—is intended to be "absolute" and not subject to exceptions. *See, e.g., Fed. Ins. Co. v. Woods (In re Woods)*, 558 B.R. 164, 172 (Bankr. W.D. Ky. 2016) ("Kentucky's statute of repose imposes an absolute bar to actions for fraud commenced more

[8] Additionally, Askin does not allege that Notre Dame or the NCAA engaged in any affirmative act that prevented him from investigating his claim. His concealment allegations are thus deficient as a matter of law. *See, e.g., Adkins*, 2004 U.S. Dist. LEXIS 26688, at *18 (rejecting fraudulent concealment theory where plaintiffs failed to allege that defendant took any step that would have prevented them from investigating injuries and their causes).

than ten years after the perpetration of the fraudulent act."); *Dodd v. Dyke Indus.*, 518 F. Supp. 2d 970, 976 (W.D. Ky. 2007) (stating that the statute of repose was "intended to be absolute").[9]

In a last-ditch effort to salvage his untimely claims, Askin argues that, "public policy and equitable considerations" should prevent the Defendants from "tak[ing] advantage of" the statutory language of the statute of repose, which requires a claim to be brought within ten years of the "perpetration of the fraud." (Opp., p. 22.) Askin asks the Court to simply disregard the plain language of KRS 413.130(3), which it cannot do. *E.D. v. Commonwealth*, 152 S.W.3d 261, 265 (Ky. App. 2004) ("[T]his court is not in a position to add words and meaning to a statute that is clear on its face. We can only enforce the statute as it is written.") (internal citations omitted). Because KRS 413.130(3) "potentially bar[s] the plaintiff's suit before the cause of action arises," it is a true statute of repose. *Dodd*, 518 F. Supp. at 973. This was the clear intent of the General Assembly when it enacted KRS 413.130(3). *Id.* Askin's gripe that the statute is unfair must be addressed, if at all, by the General Assembly, not this Court.

CONCLUSION

For the above reasons and those in Defendants' motions to dismiss, the Court should dismiss as untimely all of Askin's claims in this case.

[9] Askin cites *Dodd* for the proposition that "Kentucky courts have applied KRS 413.190(2) 'to keep alive a fraud claim beyond 10 years,' *albeit in the context of a fiduciary relationship*." (Opp., p. 21 (emphasis added).) *Dodd*, however, did not reach the question of whether the fraudulent concealment statute could toll the statute of repose. *Dodd*, 518 F. Supp. 2d at 973, 976. Furthermore, as Askin concedes, the court in *Dodd* noted that the fraudulent concealment statute had been applied in the setting of the statute of repose only where there was an ongoing fiduciary relationship between the plaintiff and the defendant. Askin does not allege that Notre Dame or the NCAA owed fiduciary duties to him during the 32 years that followed his graduation before his alleged date of diagnosis.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 24, 2019, the foregoing was filed electronically through the KYeCourts system, and a copy was served by email on the following counsel of record:

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EXHIBIT 1

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

In re: Riddell Football Helmets

THIS DOCUMENT RELATES TO:

Oliver, et al. v. Riddell, Inc., et al.	2016-L-002638
Paul Hornung, et al. v. Riddell, Inc., et al.	2016-L-006686
Gregory Boone, et al. v. Riddell, Inc., et al.	2016-L-006935
Gary Anderson, et al. v. Riddell, Inc., et al.	2016-L-008474
Rahim Abdullah, et al. v. Riddell, Inc., et al.	2016-L-008477
Antoine Cash, et al. v. Riddell, Inc., et al.	2016-L-012367
Adrian Coxson, et al. v. Riddell, Inc., et al.	2016-L-012368
Jeffrey Bryant, et al. v. Riddell, Inc., et al.	2016-L-012369
Gregory Brown, et al. v. Riddell, Inc., et al.	2016-L-012370
Jacob Cutrera, et al. v. Riddell, Inc., et al.	2017-L-000562
Gregory Boone v. Riddell, Inc., et al.	2016-L-006935
Adrian Coxson v. Riddell, Inc., et al.	2016-L-012368
Jacob Cutrera v. Riddell, Inc., et al.	2017-L-000562
Eric Hayes v. Riddell, Inc., et al.	2017-L-003999
George Hinkle v. Riddell, Inc., et al.	2017-L-004000
James Rouse v. Riddell, Inc., et al.	2017-L-004002
Lawrence Gaines v. Riddell, Inc., et al.	2017-L-004004
Dannie Lockett v. Riddell, Inc., et al.	2017-L-004006
Dwight McDonald v. Riddell, Inc., et al.	2017-L-004008
Reginald Phillips v. Riddell, Inc., et al.	2017-L-004009
Tyrone McKenzie v. Riddell, Inc., et al.	2017-L-004013
Frank Murphy v. Riddell, Inc., et al.	2017-L-004014
Keith Newman v. Riddell, Inc., et al.	2017-L-004021
Darrien Johnson v. Riddell, Inc., et al.	2017-L-004023
Brit Miller v. Riddell, Inc., et al.	2017-L-004024
Walter Young v. Riddell, Inc., et al.	2017-L-004025
Larry Brinson v. Riddell, Inc., et al.	2017-L-004026
Gill Byrd v. Riddell, Inc., et al.	2017-L-004027
Willard Harrell v. Riddell, Inc., et al.	2017-L-004028
Thomas John Reaves v. Riddell, Inc., et al.	2017-L-004030
Yancey Thigpen v. Riddell, Inc., et al.	2017-L-004031
Randolph Crowder v. Riddell, Inc., et al.	2017-L-004032
Fred McCallister v. Riddell, Inc., et al.	2017-L-004033
Mark McMillian v. Riddell, Inc., et al.	2017-L-004041
Wilbert Montgomery v. Riddell, Inc., et al.	2017-L-004042
Frank Ori v. Riddell, Inc., et al.	2017-L-004044
Michael Pelton v. Riddell, Inc., et al.	2017-L-004047
Clarence Williams v. Riddell, Inc., et al.	2017-L-004048
Charles Wright v. Riddell, Inc., et al.	2017-L-004049
Donald Elder v. Riddell, Inc., et al.	2017-L-004050
Henry Ellard v. Riddell, Inc., et al.	2017-L-004051
Dennis Lundy v. Riddell, Inc., et al.	2017-L-004058

Ricky Porter v. Riddell, Inc., et al.	2017-L-004062
Vernon Turner v. Riddell, Inc., et al.	2017-L-004063
Earl Holmes v. Riddell, Inc., et al.	2017-L-004064
Earnest Graham v. Riddell, Inc., et al.	2017-L-004067
Lucas Petitgout v. Riddell, Inc., et al.	2017-L-004069

ORDER

THIS CAUSE coming to be heard on the Riddell Defendants' 735 ILCS 5/2-619 Motion to Dismiss Based on Statute of Limitations and for Case Management Conference, due notice having been given, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED:

1. The Riddell Defendants' Omnibus 2-619 Motion to Dismiss Based on Statute of Limitations is granted as to the cases involving the 53 plaintiffs identified in the attached list marked Exhibit A. The dismissal of these 53 actions is with prejudice for the reasons stated on the record during the hearing conducted on June 28, 2017, as contained in the transcript of the hearing to be incorporated into this order *nunc pro tunc*. Pursuant to Illinois Supreme Court Rule 304(a), the Court finds that this order granting the dismissal of these actions with prejudice is final and appealable, and there is no just reason to delay its enforcement or appeal.

2. The Riddell Defendants' 2-619 Motions to Dismiss Based on Statute of Limitations as relate to the 39 plaintiffs identified on the attached list marked Exhibit B,[1] are denied for the reasons stated on the record during the hearing conducted on June 28, 2017, as contained in the transcript of the hearing to be incorporated into this order *nunc pro tunc*.

3. This matter is continued to July 25, 2017, for hearing on Defendants' 2-615 Motion to Dismiss Plaintiffs' Second Amended Complaint in the *Oliver* and *Coxson* actions and for hearing on the Non-resident

[1] There were originally 97 players in this coordinated litigation. In addition to the 53 players listed on Exhibit A, and the 39 players listed on Exhibit B, five additional players in these cases here also sued the Riddell Defendants in *In re National Football League Players' Concussion Injury Litigation*, MDL No. 2323 (E.D.Pa.) (NFL MDL): Mark Cotney, Patrick Hunter, Derek Kennard, Reginald Johnson and Labrandon Toefield. Plaintiffs Patrick Hunter, Derek Kennard, and Reginald Johnson voluntarily dismissed their actions here, and are no longer part of this litigation here. Plaintiff LaBrandon Toefield voluntarily dismissed his action in the NFL MDL, and the disposition of his action here will be resolved by further order of this Court. Plaintiff Mark Cotney still has yet to advise the Court whether he intends to attempt to proceed here or instead in the NFL MDL, pursuant to the Court's Order of May 22, 2017.

Defendants' Motion to Dismiss the Second Amended Complaints in the *Oliver* and *Coxson* actions for lack of personal jurisdiction. (These Motions to Dismiss were filed May 3, 2017.) The parties are to submit courtesy copies of the motions, memoranda of law in support, plaintiffs' response brief(s), and defendants' reply briefs to the Court by July 7, 2017.

4. This matter is continued for further case management and hearing on the above described motions to dismiss on July 25, 2017 at 11:00 a.m.

Judge John H. Ehrlich

JUN 30 2017

Circuit Court 2075

ENTERED:

By: _____
Judge John H. Ehrlich

EXHIBIT A

Boone:
Michael Butler
Melvin Carver
Craig Curry
James Harrell
Robert Harris
Carlton Bailey Jones
Brad Quast
John Michael Reichenbach
Adam Schreiber
Eric Wright

Abdullah:
Rahim Abdullah
Douglas Beaudoin
Rod Davis
Major Everett
David Galloway
Kenneth Greene
Ricky Nattiel
Mark Nichols
Bernard Whittington
John L. Williams
Michael Williams
Glen Young

Cash:
Antoine Cash
Glen Earl
Joe Odom

Coxson:
Chartric Darby
Central McClellion
Maurice Morris
Gerald Wunsch

Anderson:
Gary Anderson
Michael Clark
Chris Dieterich
Gerald Feehery
William Gay
Jeff Herrod
James Jones
Ernest Mills
Bruce Taylor
Thomas Vaughn
Lawrence Watkins
Felix Wright

Bryant:
Jeffrey Bryant
Dan Fike
David Hadley
Walter Lee (Todd) Howard
Sean Love
Cleophus Miller

Brown:
Gregory Brown
Alphonso Carreker
Wendell Patrick Carter
Al Davis
Eric Hipple
Lemar Parrish

EXHIBIT B

Boone:
Gregory Boone
Larry Brinson
Gill Byrd
Willard Harrell
Thomas "John" Reaves
Yancey Thigpen

Abdullah:
Donald Elder
Henry Ellard
Dennis Lundy
Ricky Porter
Vernon Turner

Cash:
Earnest Graham
Earl Holmes
Lucas Petitgout

Coxson:
Adrian Coxson
Tyrone McKenzie
Frank Murphy
Keith Newman

Hornung:
Paul Hornung

Anderson:
Randolph Crowder
Fred McCallister
Mark McMillian
Wilbert Montgomery
Frank Ori
Michael Pelton
Clarence Williams
Charles Wright

Bryant:
Lawrence Gaines
Dannie Lockett
Dwight McDonald
Reginald Phillips

Brown:
Eric Hayes
George Hinkle
James Rouse

Cutrera:
Jacob Cutrera
Darrien Johnson
Brit Miller
Walter Young

Oliver:
Paul Oliver